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dba TRUSTEE CORPS (erroneously named herein  
as TRUSTEE CORP.)

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

## LEODEGARIO SALVADOR,

Plaintiff,

V.

BANK OF AMERICA NA; TRUSTEE CORP, THEIR ASSIGNEES AND/OR SUCCESSORS, DOE INDIVIDUALS A THROUGH X, INCLUSIVE AND ROE CORPORATIONS A THROUGH X INCLUSIVE, AND ALL OTHER PERSONS UNKNOWN AND CLAIMING ANY RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE REAL PROPERTY DESCRIBED IN THIS COMPLAINT ADVERSE TO PLAINTIFF'S OWNERSHIP OR ANY CLOUD UPON PLAINTIFF'S TITLE THERETO.

## Defendants

Case No. 2:14-cv-00149-LDG-GWF

**DEFENDANT MTC FINANCIAL INC. dba  
TRUSTEE CORPS' MOTION TO QUASH  
SERVICE**

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1                   Defendant MTC FINANCIAL INC. dba TRUSTEE CORPS (erroneously named herein as  
 2 TRUSTEE CORPS) (“TRUSTEE CORPS”) moves to quash service of process and dismiss the  
 3 claims in Plaintiff’s Complaint. This motion is based on the pleadings and papers on file herein  
 4 and the following memorandum of points and authorities.

5                   **MEMORANDUM OF POINTS AND AUTHORITIES**

6                   **I. DEFENDANT HAS NOT BEEN PROPERLY SERVED**

7                   Plaintiff LEODEGARIO SALVADOR apparently attempted service of the Summons and  
 8 Complaint on TRUSTEE CORPS on January 2, 2014, via United States Postal Service, regular  
 9 mail. (See, Exhibit A attached, AFFIDAVIT OF SERVICE.) The mailing sent to TRUSTEE  
 10 CORPS did not include any waiver of service form or request for the same. Plaintiff failed to  
 11 comply with the Federal Rules of Civil Procedure or Nevada Rules of Civil Procedure. The  
 12 attempt at service is improper pursuant to Fed. R.Civ. P. 4(h) and 4(d), and should be quashed.

13                   Plaintiff is required to properly serve the Summons and Complaint on all Defendants. He  
 14 has failed to accomplish proper service. All he did was mail the complaint to TRUSTEE CORPS.  
 15 The requirements of service of process are described in detail in Rule 4 of the Nevada Rules of  
 16 Civil Procedure. One way to properly serve Defendants is for Plaintiff to have an authorized  
 17 agent deliver the Summons and Complaint to Defendant’s duly appointed resident agent.  
 18 Another way to effect service is to personally serve an employee of Defendant who is authorized  
 19 to accept service of process. Plaintiff did neither.

20                   Defendant TRUSTEE CORPS therefore brings this motion as a challenge to service,  
 21 pursuant to FRCP 12, which provides that to avoid waiver of a defense of lack of jurisdiction over  
 22 the entity, insufficiency of process, or insufficiency of service or process, the Defendant should  
 23 raise its defenses either in an answer or pre-answer motion. *Dougan v. Gustaveson*, 108 Nev.  
 24 517, 835 P.2d 795 (1992), abrogated in part on other grounds by *Scrimer v. Eighth Judicial*  
 25 *District Court*, 116 Nev. 507, 998 P.2d 1190 (2000), and *Fritz Hansen A/S*, 116 Nev. 650, 6 P.3d  
 26 982 (2000). This is the defense raised by Defendant TRUSTEE CORPS herein.

27                   Without proper service, this Court should dismiss Plaintiff’s Complaint against Defendant  
 28 TRUSTEE CORPS.

1                   Federal Rule of Civil Procedure 12(b)(5) provides a defense for “insufficiency of service  
 2 of process.” Plaintiff’s failure to properly serve the Complaint despite having adequate time to  
 3 effectuate service of process provides a basis for the present motion.

4                   **A.       Mailing the complaint Is Not Proper Service Under FRCP Rule 4**

5                   The Nevada Rules of Civil Procedure provide:

6                   **(d) Summons: Personal Service.** The summons and complaint  
 7 shall be served together. The plaintiff shall furnish the person  
 8 making service with such copies as are necessary. Service shall be  
 made by delivering a copy of the summons attached to a copy of the  
 complaint as follows:

9                   (1) Service upon Nevada corporation. If the suit is against an  
 10 entity or association formed under the laws of this state or  
 registered to do business in this state, to the registered agent thereof  
 11                   . . .  
 . . .

12                   Service by mail is not personal service. In *C.H.A. Venture v. GC Wallace Consulting*  
 13 *Eng’rs, Inc.*, 106, Nev. 381, 794 P.2d 707 (1990), the court held that notice is not a substitute for  
 14 service of process. Personal service or a legally provided substitute must still occur in order to  
 15 obtain jurisdiction over a party. Service is a threshold requirement, without which, leaves this  
 16 Court entirely without jurisdiction over Plaintiff’s claims. Because of the insufficient service of  
 17 process, this Court should quash service until such time a proper service is made.

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 28                   <sup>1</sup> The federal rules adopt the applicable state law concerning service of process. *See*, FRCP Rule 4(e)(1) and Rule  
 4(h)(1)(A).

1       **II. CONCLUSION**

2           For the above reasons, Defendant TRUSTEE CORPS requests the improper attempt at  
3 service by Plaintiff be quashed.

4           Dated: February 7, 2014

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